

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: [REDACTED]

FEB 22 1996

Employer Identification Number: [REDACTED]

Key District: Southeast (Baltimore, MD)

Form Number: 1120

Tax Years: All years

Accounting Period Ending: December 31

Dear Applicant:

This is a final adverse ruling as to your qualification for exemption under section 501(c)(3) of the Internal Revenue Code.

This ruling is made for the following reason(s): Your articles of incorporation do not meet the organizational test of section 501(c)(3) of the Code and the regulations thereunder. You have failed to establish that you will operate exclusively for exempt purposes, that your operation will not benefit private interests more than incidentally, and that your earnings will not inure to the benefit of private individuals. You have failed to fully describe the activities in which you expect to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out your activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

Contributions to your organization are not deductible under Code section 170.

You are required to file federal income tax returns on the above form. Based on the financial information you furnished, it appears that returns should be filed for the tax years shown above. You should file these returns with your key District Director for exempt organization matters within 30 days from the date of this letter, unless a request for an extension of time is granted. Returns for later tax years should be filed with the appropriate service center as indicated in the instructions for those returns.

[REDACTED]

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, you must initiate a suit in the United States Tax Court, the United States Claims Court, or the District Court of the United States for the District of Columbia before the 91st day after the date that this ruling was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Processing of income tax returns and assessment of any taxes due will not be delayed because a declaratory judgment suit has been filed under Code section 7428.

In accordance with section 6104(c) of the Code, the appropriate State officials will be notified of this action.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown above.

Sincerely yours,

[REDACTED]
[REDACTED]
Director, Exempt Organizations
Technical Division

[REDACTED]

[REDACTED]

[REDACTED]

JUN 20 1995

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

You were incorporated [REDACTED] under the laws of the state of [REDACTED]. Your purposes, as stated in your articles of incorporation, are "public access to food, computers, social services and research." Your articles contain no provision governing distribution of your assets upon dissolution. You are governed by a four-member board of directors consisting of [REDACTED] and members of his family.

Your activities to date have consisted largely of the operation of a computer bulletin board system (BBS) which is freely available to anyone who calls in. The BBS contains many different types of files including utilities, productivity tools, programming tools, games, and graphics. Your president, [REDACTED], has stated that he has engaged in various charitable activities, but we are unable to establish that these are your activities as an organization rather than his as an individual.

Although some portions of the business plan you submitted refer to free distribution of computers, other portions indicate that your goals include achieving 1% to 10% of a market "estimated in the millions of dollars" and becoming "the market leader in sales." You indicate that you will represent specific product lines. Other items in the plan indicate that you will be providing computers and consulting services to the general public. You state that you will set your prices based not just according to your costs, but also according to what the market will pay.

Section 501(c)(3) of the Internal Revenue Code describes, in relevant part, corporations organized and operated exclusively for charitable or educational

purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iv) of the regulations provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal Government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Founding Church of Scientology v. United States, 412 F.2d 1197 (Cl. Ct. 1969), cert. denied, 397 U.S. 1009 (1970), the Claims Court held that a private party's ability to dictate the amount of its compensation may be unreasonable

private benefit in and of itself, even where the private party pays itself a reasonable amount.

Rev. Proc. 90-27, 1990-1 C.B. 514, Section 5.02, states that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

Although you have agreed to do so, you have not amended your articles of incorporation to meet the requirements of the organizational test. Your purposes, as stated in your articles, are too broadly worded to necessarily fall within the purposes enumerated in section 501(c)(3) of the Code. Your assets are not dedicated to a charitable purpose because there is no provision in your articles governing their distribution in the event of your dissolution.

Although you have indicated a willingness to do so, you have not changed the composition of your board of directors to include a majority of persons who are not members of the [REDACTED] family. This is an indication of unreasonable private benefit and potential for abuse. See Founding Church of Scientology v. United States.

You have been unable to demonstrate that access to your BBS actually furthers any exempt purpose. We are unable to determine, based on the information provided, how many persons can access or have accessed your system. We are also unable to determine how widely the availability of your system is known to the interested public.

You have been unable to demonstrate that any of your other activities further an exempt purpose. Your business plan indicates that you will be engaging in sales and consulting activities similar to those provided by for-profit businesses. Such activities are not in furtherance of any exempt purpose.

You have been unable to describe your proposed operations in sufficient detail to permit a conclusion that you will meet the requirements of section 501(c)(3) of the Code. In fact, you have frequently changed your description of your proposed activities, so that we are unable to determine with any certainty what those activities actually will be. You have not specified your anticipated sources of receipts or the nature of your contemplated expenditures.

Accordingly, based on all the facts and circumstances, we conclude that you do not qualify for recognition of exemption under section 501(c)(3) of the Code. Contributions to you are not deductible under section 170 and you are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

You will expedite our receipt of your reply by using the following address on the envelope:

Internal Revenue Service

1111 Constitution Avenue, NW
Washington, DC 20224

Sincerely yours,

Chief, Exempt Organizations
Technical Branch 2

Code				
Surname				
Date	10/19/95	6-19-95		